IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO. 58 OF 1992

Auro Engineering Private Ltd.,
"Aryama" Near New Octroi Post,
Gangapur Road, Nasik ..Petitioner

Vs.

1. Shri R.A. Gadekar, Member,
   Industrial Court, Nasik.

2. Shri Sopan Sridhar Nehate,
   N-31/A, 1/2a/4, New Cidco,
   Nasik.

3. Shri Bapurao Raghunath Nikam,
   R/No/25/4, Trimurti Chowk,
   New Cidco, Nasik.

4. Shri Khandu Rathan Mali,
   Ashirvad Bhavan Datta Nagar,
   Pathe Road, Panchavati,
   Nasik -3.

5. Skaria Joseph,
   R.No. N43/J12/9/8,
   4th Scheme, Ne Cidco,
   Nasik. ..Respondents.

Ms. Sabhane Gopal with Ms. Mosem Midy i.e. by M/s Haresh Mehta & Company for the Appellant.

None present for the Respondents.

CORAM : F.I. REBELLO &
ANOOP V.MOHTA, JJ.

DATE : 11TH AUGUST, 2004.

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. The present Letters Patent Appeal is directed against the order dated 17th September, 1991. The

challenge before the learned Single Judge was to the order of the Industrial Court holding in favour of the respondents-workmen on the ground that there was no compliance of the requirements of section 25-F of the Industrial Disputes Act, 1947. The learned Industrial Court had held against the company on two counts, firstly, that the retrenchment was contrary to Section 25-F of Industrial Disputes Act inasmuch as the amount of compensation had been wrongly calculated by not including in the over all pay, the amount of increment which was due and payable to the workmen as on 1st August, 1987, and secondly, the retrenchment was illegal because the retrenchment had been effected from 8th September, 1987 without making any payment as contemplated by Section 25-F of the Industrial Disputes Act, 1947. In so far as, second contention is concerned, the learned Judge was pleased to reverse the finding of the trial Court. However, in so far as first finding is concerned, the learned Judge held that there was no compliance of the statutory requirement of Industrial Disputes Act and accordingly, confirmed the order of the Industrial Court. That is the subject matter of the present petition.

2. The appeal was admitted on 15/1/1993. No interim relief was granted.

3. At the hearing of this appeal on behalf of the Appellant the learned Counsel contends, that there is nothing on record to show that the respondents were entitled for the annual increment. Apart from that it is pointed out that it was the mistake on the part of the appellants and consequently, for non-compliance and failure to pay the small amount, especially when the company was in financial difficulties, cannot be said to be violative of section 25-F of the Industrial Disputes Act.

4. We have heard the learned Counsel for the parties. In so far as, contention advanced is concerned the learned Single Judge was pleased to note that the contention by the respondents that they were entitled to an annual increment had not been contested and not replied in the Written Statement. Once that is the case, finding of Industrial Court that wages have to be computed based on the increment also cannot be faulted. The learned Single Judge has noted that the provisions of Section 25-F are mandatary and failure to comply with

the said requirements results in retrenchment been rendered void ab initio.

5. We do not find the order of the learned Single Judge suffers from any error of law. In the light of that no interference. Letters Patent Appeal dismissed, no order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]